

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**JUNIOR KELLY,**

**Plaintiff,**

**vs.**

**9:03-CV-0694**

**C. BARRETTE, *et al.*,**

**Defendants.**

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**THOMAS J. McAVOY,  
Senior United States District Judge**

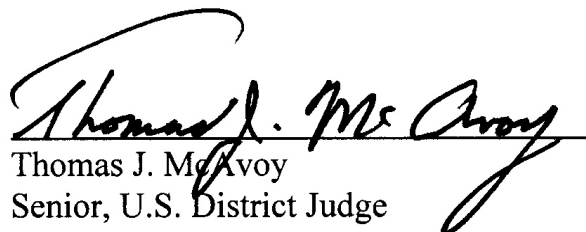
**DECISION & ORDER**

This civil action was referred by this Court to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to the Report and Recommendation dated December 6, 2005 have been filed. Furthermore, after examining the record, this Court has determined that the Report and Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report and Recommendation for the reasons stated therein.

It is therefore,

**ORDERED** that Defendants' motion for partial judgment on the pleadings (dkt. # 33) is **GRANTED**, and all claims against Defendants for damages in their official capacities, and arising under state common law, are **DISMISSED**.

DATED: March 22, 2002

  
Thomas J. McAvoy  
Senior, U.S. District Judge